

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Southern Division

FILED
2002 APR -8 AM 9:19
U.S. BANKRUPTCY COURT
N.D. OF ALABAMA

In re:

SHOOK & FLETCHER INSULATION CO.

Debtor-in-Possession.

Case No. **02 02771**
Chapter 11

**MOTION FOR ENTRY OF AN ORDER EXTENDING
TIME FOR DEBTOR TO ASSUME OR REJECT UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY**

Shook & Fletcher Insulation Co., the debtor and debtor-in-possession in this case (the "Debtor"), by counsel, hereby moves this Court for extension of the time to assume or reject all of its unexpired leases of nonresidential real property to and until the confirmation of its prepackaged Plan. In support of its Motion, the Debtor respectfully represents:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b). Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is 11 U.S.C. § 365(d)(4).

BACKGROUND

3. On April 8, 2002 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to operate its business and manage its properties as debtor-in-possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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4. The Debtor incorporates by reference as if fully set forth herein the Declaration of Wayne W. Killion, Jr. in Support of Voluntary Petition and First Day Motions filed with the Court on the Petition Date.

RELIEF REQUESTED

5. The Debtor presently is the lessee under the leases of nonresidential real property listed on Schedule A attached hereto (collectively, the "Leases"). While the Debtor presently has until June 7, 2002 to determine whether the Leases should be assumed or rejected, the Debtor believes that the plan process will not have been completed by that date. Until such process is completed, however, the Debtor should not be forced to assume or reject any of the Leases. Accordingly, the Debtor seeks an order, pursuant to section 365(d)(4) of the Bankruptcy Code, extending the time within which to assume or reject the Leases until confirmation of its prepackaged Plan.

GROUND FOR RELIEF

6. Section 365(d)(4) of the Bankruptcy Code provides:

[I]f the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

11 U.S.C. § 365(d)(4) (emphasis added).

7. Courts weigh various factors in determining whether good cause exists for granting an extension under section 365(d)(4). For example, an extension may be granted if the debtor has had insufficient time to determine both its financial situation and the potential value of a lease in terms of the formulation of a plan. See In re Ernst Home Center, Inc., 209 B.R. 974,

981 (Bankr. W.D. Wash. 1997) (holding that even in a Chapter 11 liquidation the debtor must be allowed sufficient time to evaluate a lease based on the debtor's financial future and the value of the lease itself). Such extensions may be granted so long as the debtor is paying post-petition rent to the landlord. See In re THW Enterprises, Inc., 89 B.R. 351, 357 (Bankr. S.D.N.Y. 1988) (holding that the Debtor's continuation of rent payments is an important factor in determining whether cause exists under section 365(d)(4)).

8. Applying these factors, good cause exists for granting the relief sought by the Debtor. First, the Debtor is making, and intends to continue to make, all payments under the Leases in a timely fashion. Thus, the landlords will not be prejudiced by an extension of time. Second, the Debtor anticipates assuming all of the Leases upon confirmation of its Plan, which it expects to occur promptly. Should confirmation of the Plan not occur promptly, however, the Debtor would be prejudiced by having to assume any of the Leases prematurely.

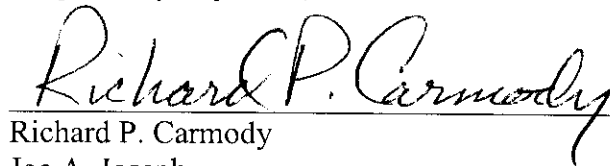
9. Accordingly, the Debtor seeks an extension of the time until confirmation of its Plan. Because there is precedent suggesting that a debtor is allowed only one extension of time to assume or reject a real property lease, and further that such single allowed extension must be granted within the first 60 days of the case, see Debartolo Properties Mgmt., Inc. v. Devan, 194 B.R. 46, 50 (Bankr. Md. 1996) ("[Section] 365(d) on its face appears to authorize only one extension beyond the initial 60-day period"), the Debtor respectfully submits that the appropriate course of action at this time is for the Court to grant an extension until confirmation of the Debtor's Plan.

10. In order to avoid even the possibility of any future harm to landlords, the Debtor proposes that each landlord be entitled to ask the Court to compel the Debtor to determine

whether to assume or reject a particular Lease at an earlier time, based upon that landlord's particular circumstances.

WHEREFORE, for the foregoing reasons, the Debtor respectfully requests that this Court enter an order extending the time to assume or reject the Leases until confirmation of its Plan, and granting such other and further relief as is just and proper.

Respectfully requested,

A handwritten signature in cursive script that reads "Richard P. Carmody". The signature is written in dark ink and is positioned above a horizontal line.

Richard P. Carmody

Joe A. Joseph

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(202) 424-7500

Proposed Attorneys for Shook & Fletcher Insulation
Co., as Debtor and Debtor-in-Possession

Dated: April 8, 2002

SCHEDULE A

<u>Landlord and Notice Address</u>	<u>Leased Location</u>	<u>Lease Date</u>
1998 Augustus Partners, LP 4920 N. Royal Atlanta Drive Tucker, GA 30084	5240 Panola Industrial Blvd. Suite N Decatur, GA	4/14/89 as amended
Robert F. Henry Tile Co. P.O. Box 2230 Montgomery, AL 36102-2230	125 North 45 th Place Birmingham, AL	10/15/82 as amended
Mobile Warehouse Co. P.O. Box 7481 Mobile, AL 36670	3374 Moffett Road Mobile, AL	7/26/94 as amended
1605 Rentals, Inc., as Agent for Mullins Warehouses (Knoxville Assoc. Ltd.) P.O. Box 6100 Knoxville, TN 37914	3420 Distribution Drive Knoxville, TN	4/12/00
Fidelity Trust Company, as Agent for Shallowford Realty Group 720 Cherry Street Chattanooga, TN 37402	5918 Quintus Loop Chattanooga, TN	9/28/00
Volunteer Leasing P.O. Box 971 171 West Factory Street Gallatin, TN 37066	171 West Factory Street Unit 5, Building F Gallatin, TN	8/9/99

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Chapter 11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of April, 2002, I caused a copy of the foregoing Motion for Entry of an Order Extending Time for Debtor to Assume or Reject Unexpired Leases of Nonresidential Real Property and Proposed Order to be served by first class mail, postage pre-paid, upon the landlord identified in each of the Leases described in the Motion and upon the persons on the attached Service List in the manner indicated.



SHOOK & FLETCHER INSULATION CO.
SERVICE LIST FOR LANDLORDS

1998 Augustus Partners, L.P.
1998 Winston Management Company, LLC, General Partner
ATTN: John W. Rooker
4920 N. Royal Atlanta Drive
Tucker, GA 30084

Robert F. Henry Tile Co.
P.O. Box 2230
Montgomery, AL 36102-2230

Mobile Warehouse Co.
P.O. Box 7481
Mobile, AL 36670

1605 Rentals, Inc.
Agent for Mullins Warehouses
Knoxville Assoc. Ltd.
P.O. Box 6100
Knoxville, TN 37914

Fidelity Trust Company
Agent for Shallowford Realty Group
720 Cherry Street
Chattanooga, TN 37402

Volunteer Leasing
P. O. Box 971
171 West Factory Street
Gallatin, TN 37066

— Shook & Fletcher Insulation Co. —
Attachment to Certificate of Service

Bankruptcy Administrator

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AmSouth Bank

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Birmingham, AL 35201-0306
Counsel for Travelers Casualty and Surety Company

* Parties designated with an asterisk were served by hand-delivery. All other parties were served by overnight mail.